STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
MICHELLE JAMES,	)	
	)	
	)	
Complainant,	)	CHARGE NO(S): 2007CF1052
	)	EEOC NO(S): 21BA70183
and	)	ALS NO(S): 08-0029
	)	
AMERITECH SERVICES,	)	
	)	
	)	
Respondent.	)	

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)

Entered this 7th day of January 2011

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
MICHELLE JAMES,	)	
	)	
Complainant,	)	**ALS NO.: 08-0029**
	)	**CHARGE NO.: 2007CF1052**
v.	)	**EEOC NO.: 21BA70183**
	)	
AMERITECH SERVICES, INC.,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion for summary decision. Respondent filed its motion along with affidavits and exhibits on May 29, 2009. Complainant filed a response to the motion along with affidavits and exhibits on July 8, 2009. Respondent filed a reply on July 27, 2009.

The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter and is, therefore, named herein as an additional party of record.

CONTENTIONS OF THE PARTIES

Complainant alleges that Respondent subjected her to discrimination based on race in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.* Respondent contends that it is entitled to summary decision in its favor because the undisputed facts show that Complainant was not subjected to race discrimination. Complainant contends that issues of fact remain as to her claim of race discrimination and as to whether Respondent's articulated reason for discharging her was pretext for race discrimination.

FINDINGS OF FACT

The following facts were derived from uncontested facts in the record and were not the result of credibility determinations. All evidence was viewed in the light most favorable to Complainant.

1. Complainant's race is Black.
2. Respondent, Ameritech Services, Inc., is in the business of providing telecommunication services. Respondent operates a Contact Quality Center located on Sawyer Avenue in Chicago, Illinois, commonly referred to as the Sawyer Call Center (SCC). The SCC is staffed by Contractor Sales Analysts and Core Analysts (Analysts), who are supplied by third party vendors. NextGen Information Services, Inc. (NextGen) is one such vendor that furnishes temporary workers to Respondent to perform the functions of Analysts. Respondent generally limits Analysts to eighteen-month assignments.
3. Analysts are responsible for reviewing customer calls handled by employees of Respondent and affiliated companies to ensure that Respondent's policies and procedures are being followed.
4. At the relevant time, Respondent's written attendance policy relating to sick and personal leave allowed Analysts four sick days for the first year of employment. Upon reaching their one year anniversary, Analysts received four new sick days to use for the remaining six months of their contract. Analysts were not allowed to take any personal time off during the first sixty days of their contract. After sixty days, Analysts received seven personal days for the first year of employment. Upon reaching their one year anniversary, Analysts received seven new personal days to use for the remaining six months of their contract. Sick and personal days would not carry over from the first year to the remaining six months of the contract.

5. Since 2004, supervisors at the SCC have followed an informal attendance policy in which Analysts were generally permitted to request unpaid leave for up to four sick days (32 hours) and seven personal days (56 hours) during the first year of their contract, business needs and schedules permitting. After completing the first year of their contract, Analysts were allotted an additional eleven unpaid days off to be used during the final six months of their contract.

6. Analysts were expected to request leave through their third party vendor employer, which would then forward the request to Respondent for a determination as to whether the absence could be accommodated based on Respondent's needs.

7. Complainant was employed by NextGen and contracted to Respondent at the SCC for an eighteen-month assignment from October 10, 2005 until April 10, 2007. From October 10, 2005 until August 6, 2006, Complainant was assigned to a Contractor Sales Analyst position. On August 6, 2006, Complainant was transferred to a Core Analyst position on a team managed by Bruce Goodwin. Sometime in August, 2006, Complainant requested leave from Goodwin to attend her wedding and honeymoon in October, 2006. In late August, 2006, until she was discharged on October 9, 2006, Complainant was supervised by Rodrigo Romo, Contact Quality Center Senior Analyst. Romo's immediate supervisor was Associate Director Ruben Ponce De Leon.

8. On September 20, 2006, Romo sent out an electronic mail message (e-mail) to all Analysts under his supervision, including Complainant and James Frizell, asking whether anyone was requesting any leave time in October. Complainant responded, "My days are Oct. 5-18 for my wedding I hope that is okay." At the time Complainant made this request to Romo, she had been absent for 15.9 days, which had already exceeded the maximum number of eleven absences permitted under Respondent's attendance policy.

9. On September 20, 2006, Romo approved Complainant's leave request for October 5 and 6, 2006, but did not approve the remaining requested eight leave days.

10. Complainant worked on October 4, 2006, and was absent pursuant to her approved leave request on October 5 and 6, 2006. When Complainant did not appear for the next work day on October 9, 2006, Respondent terminated Complainant's contract.

11. During the first year of her contract from October 10, 2005 until October 9, 2006, Complainant was absent from work for a total of 19.15 days, including her absences on October 5-6, 2006 and her failure to appear for work on October 9, 2006.

12. James Frizell, white, was employed for an eighteen-month assignment from August 15, 2005 to February 15, 2007. During the first year of his contract, Frizell was absent four hours on August 26, 2005; two hours on September 1, 2005; one day on September 2, 2005; four hours on November 23, 2005; one day on December 27, 2005; three days on January 11, 12, and 13, 2006; and two days on April 27 and 28, 2006, for a total of 8.25 days. During the final six months of his contract, from August 15, 2006 to February 11, 2007, Frizell took five days of leave for his wedding and honeymoon on August 28, 29, 30, 31, 2006 and September 1, 2006; one day on Nov 13, 2006; one hour on Nov 14, 2006; one day on December 26, 2006; and 4.25 hours on February 9, 2007, for a total of seven days and 5.25 hours.

CONCLUSIONS OF LAW

1. The Illinois Human Rights Commission has jurisdiction over the parties and subject matter of this Complaint. (It is noted that Respondent disputes that it was Complainant's employer within the definition of Section 2-101(B)(1) of the Act, citing *Bob Neal Pontiac-Toyota, Inc. v. the Industrial Commission,* 89 Ill.2d 403, 433 N.E.2d 678 (1982); however, for purposes of this summary decision motion, Respondent does not contest this legal conclusion.)

2. Complainant is an aggrieved party as defined by section 5/1-103(B) of the Act.
3. This record presents no material issues of fact as to Complainant's race discrimination claim.
4. This record presents no material issues of fact as to whether Respondent's proffered reason for discharging Complainant was pretext.

DETERMINATION

Respondent is entitled to summary decision in its favor.

DISCUSSION

Complainant's race is Black. Complainant alleges that she was subjected to illegal discrimination based on her race when Respondent discharged her on October 9, 2006, for taking unauthorized vacation days and that a similarly situated non-Black employee was not discharged.

Respondent is in the business of providing telecommunication services. Respondent operates a Contact Quality Center located on Sawyer Avenue in Chicago, Illinois, commonly referred to as the Sawyer Call Center (SCC). The SCC is staffed by Contractor Sales Analysts and Core Analysts (Analysts), who are supplied by third party vendors. NextGen Information Services, Inc. (NextGen) is one such vendor that furnishes temporary workers to Respondent to perform the functions of Analysts. Respondent generally limits Analysts to eighteen-month assignments. Analysts are responsible for reviewing customer calls handled by employees of Respondent and affiliated companies to ensure that Respondent's policies and procedures are being followed.

At the relevant time, Respondent's written attendance policy relating to sick and personal leave allowed Analysts four sick days for the first year of employment. Upon reaching their one year anniversary, Analysts received four new sick days to use for the remaining six months of their contract. Analysts were not allowed to take any personal time off during the first

sixty days of their contract. After sixty days, Analysts received seven personal days for the first year of employment. Upon reaching their one year anniversary, Analysts received seven new personal days to use for the remaining six months of their contract. Sick and personal days would not carry over from the first year to the remaining six months of the contract.

Since 2004, supervisors at the SCC have followed an informal attendance policy in which Analysts were generally permitted to request unpaid leave for up to four sick days (32 hours) and seven personal days (56 hours) during the first year of their contract, business needs and schedules permitting. After completing the first year of their contract, Analysts were allotted an additional eleven unpaid days off to be used during the final six months of the contract. Analysts were expected to request leave through their third party vendor employer, which would then forward the request to Respondent for a determination as to whether the absence could be accommodated based on Respondent's needs.

Complainant was employed by NextGen and contracted to Respondent at the SCC for an eighteen-month assignment from October 10, 2005 until April 10, 2007. From October 10, 2005 until August 6, 2006, Complainant was assigned to a Contractor Sales Analyst position. On August 6, 2006, Complainant was transferred to a Core Analyst position on a team managed by Bruce Goodwin. Sometime in August, 2006, Complainant requested leave from Goodwin to attend her wedding and honeymoon in October, 2006. In late August, 2006, until she was discharged on October 9, 2006, James was supervised by Rodrigo Romo, Contact Quality Center Senior Analyst. Romo's immediate supervisor was Associate Director Ruben Ponce De Leon.

On September 20, 2006, Romo sent out an electronic mail message (e-mail) to all Analysts under his supervision, including Complainant and James Frizell, asking whether anyone was requesting any leave time in October. Complainant responded by e-mail stating, "My days are Oct 5-18 for my wedding I hope that is okay." At the time of this request to Romo,

Complainant had been absent for 15.9 days, which had already exceeded the maximum number of eleven absences permitted under Respondent's attendance policy. On September 20, 2006, Romo approved Complainant's leave request for October 5 and 6, 2006, but did not approve the remaining requested eight leave days.

Complainant worked on October 4, 2006, and was absent pursuant to her approved leave request on October 5 and 6, 2006. When Complainant did not appear for the next work day on October 9, 2006, Respondent terminated Complainant's contract.

During the first year of her contract from October 10, 2005 until October 9, 2006, Complainant was absent from work for a total of 19.15 days, including her approved absences on October 5 and 6, 2006, and her failure to appear for work on October 9, 2006.

James Frizell, white, was employed for an eighteen-month assignment from August 15, 2005 to February 15, 2007. During the first year of his contract, Frizell was absent four hours on August 26, 2005; two hours on September 1, 2005; one day on September 2, 2005; four hours on November 23, 2005; one day on December 27, 2005; three days on January 11, 12, and 13, 2006; and two days on April 27 and 28, 2006, for a total of 8.25 days. During the final six months of his contract, from August 15, 2006 to February 11, 2007, Frizell took five days of leave for his wedding and honeymoon on August 28, 29, 30, and 31, 2006 and September 1, 2006; one day on Nov 13, 2006; one hour on Nov 14, 2006; one day on December 26, 2006; and 4.25 hours on February 9, 2007, for a total of seven days and 5.25 hours.

A Complainant bears the burden of proving discrimination by the preponderance of the evidence. Section 5/8A -102 (I) (1) of the Act. That burden may be satisfied by direct evidence that adverse action was taken for impermissible reasons or through indirect evidence in accordance with the method set out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 793, 93 S. Ct. 1817 (1973), and *Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248, 101 S. Ct. 1089 (1981). This method of proof has been approved by the Illinois Supreme Court and

adopted by the Commission in *Zaderaka v. Illinois Human Rights Commission*,131 Ill. 2d 172, 545 N.E.2d 684 (1989).

Under this three-step approach, a complainant must first establish a *prima facie* case of unlawful discrimination. Then, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its adverse action. Once the respondent successfully makes this articulation, the presumption of unlawful discrimination drops and the complainant is required to prove, by a preponderance of the evidence, that the respondent's articulated reason is a pretext for unlawful discrimination.

Here, Complainant puts forth no evidence to support a direct case of discrimination; thus, her claim is analyzed pursuant to the *McDonnell Douglas- Burdine* three-step approach. First, Complainant has the burden to prove a *prima facie* case of unequal terms and conditions of employment based on race. To meet this burden, Complainant must show that (1) she is a member of a protected class, (2) she was treated in a particular manner by Respondent, and (3) similarly situated employees outside her protected class were treated more favorably. *Turner-Hiner and Illinois Children's School and Rehabilitation Center*, IHRC, ALS No. 6170, July 2, 1997; *Moore and Beatrice Food Co.*, IHRC, ALS No. 2141, May 12, 1988.

There is no dispute as to the first two elements. Complainant's race is Black and she was discharged on October 9, 2006. For the third element, Complainant identifies Frizell as a similarly situated co-worker outside of her protected class who was treated more favorably. Complainant argues that Frizell used a total of twelve leave days during the period from November 23, 2005 through September 1, 2006, and his contract was not terminated. Because the record shows that Frizell began his employment with Respondent on August 15, 2005, the relevance of calculating the use of leave time for the time period from November 23, 2005 through September 1, 2006, as cited by Complainant, is unclear. However, Complainant contends that Frizell is similarly situated because he held a similar position and reported to the same supervisor as Complainant.

While not disputing that Frizell held a similar position and reported to the same supervisor as Complainant, Respondent argues that Frizell is not similarly situated to Complainant for this *prima facie* analysis because the undisputed facts show that, unlike Complainant, Frizell did not violate its leave policy. To support its position, Respondent presents the affidavit of Romo and the time sheets of Complainant, marked as Exhibit 2, and Frizell, marked as Exhibit 12, to its motion. Romo avers that the time records were maintained on an "eTemp" system that tracked the hours worked by the contractors at the SCC. A review of the time records for Frizell establish that he began employment for Respondent on August 15, 2005. For the period August 15, 2005 until August 14, 2006, Frizell took 7.75 days of leave. During the remaining six months of his contract, from August 15, 2006 until February 11, 2007, Frizell took 7.65 days of leave. (Although Frizell's time sheet for the final three days of his contract from February 12, 2007 through February 14, 2007 is not present in the record, Frizell had 3.35 days remaining of leave time that he could have used without violating Respondent's attendance policy.)

A review of the time records for Complainant establishes that, from October 10, 2005 through October 6, 2006, she took 18.15 days of leave. The record further shows that, at the time Complainant requested the ten days of leave from Romo on September 20, 2006, she had already taken 15.9 days of leave during her first contract year, which exceeded the allotted eleven days as set forth in Respondent's attendance policy. Notwithstanding that Complainant had already exceeded the allotted days for her first contract year, Romo approved two days of Complainant's leave request for October 5 and 6, 2006, but did not approve the other eight requested days.

Although Complainant rightfully points out that Respondent miscalculated the number of days she used leave time at different points in the record, these minor miscalculations do not change the undisputed facts, as both of Respondent's calculations support its position that Complainant exceeded the allotted eleven days of leave time allowed pursuant to its attendance

policy. (Complainant points out that Respondent calculated her total leave used as 15.5 days in its interrogatory answers and as 18.2 days in Romo's affidavit.) Moreover, Complainant admits that she was *not* entitled to additional leave time until her anniversary date, which would have begun on October 10, 2006. In her response to the motion, Complainant states, "At the same time, [Complainant] would have been entitled to the full 10 days off had her wedding been scheduled for just 3 business days later." (Complainant's response to motion for summary decision at pg. 8). Complainant also states in her response, "All Romo had to do was 'advance' [Complainant] three vacation days and she could have kept her job." (Complainant's response to motion for summary decision at pgs. 8-9).

The undisputed facts here support that Frizell, unlike Complainant, did not violate Respondent's leave policy; therefore, Frizell is not similarly situated for this comparison and Complainant's *prima facie* case fails.

Pretext

Under Commission precedent, it is possible for a complainant to prevail without establishing a *prima facie* case if the complainant can establish that Respondent's articulated reason for its employment decision was pretextual. *Clyde and Caterpillar, Inc.*, IHRC, ALS No. 2794, Nov. 13, 1989, aff'd *Clyde v Human Rights Commission*, 206 Ill App 3d 283, 564 N.E.2d 265 (4th Dist 1990). Therefore, if Complainant here can raise a genuine issue of fact on the issue of pretext, Respondent's motion must be denied.

Respondent's articulated reason for discharging Complainant was that Complainant violated its attendance policy when she failed to appear for work on October 9, 2006, following her approved absence on October 5-6, 2006. Here, Complainant attempts to create an issue of fact as to Respondent's articulation by asserting that her previous supervisor, Bruce Goodwin, had approved her ten-day leave request prior to Romo becoming her new supervisor. Although Goodwin submits his affidavit averring that he never approved Complainant's requested leave,

whether Goodwin did so or not is simply not the issue here. Although Complainant apparently believed that Goodwin approved her ten-day leave request, the undisputed facts support that Romo became Complainant's supervisor in August, 2006 and that he clearly relayed to Complainant in September, 2006 that he would not approve her ten-day leave request. Respondent presents a September 20, 2006 e-mail from Complainant to a co-worker in which Complainant expressed her fear that her leave request would not be approved. Respondent presents an e-mail from Complainant to Ponce De Leon on September 22, 2006, informing De Leon that Goodwin had previously approved her requested ten-day leave; however, she had been made aware that the approval was revised to include only two days. Complainant asked De Leon if something could be worked out. Respondent submits a third e-mail dated September 22, 2006, from Complainant to Goodwin in which Complainant expressed that she expected to be discharged because she was only granted two days off for her wedding and not the ten days she requested. Complainant does not dispute these correspondences.

This undisputed evidence supports that Complainant received Romo's directive that he only approved two days of her ten-day leave request for her wedding and that failure to abide by this approval would lead to Complainant's discharge. Complainant points to nothing in this record that creates any issues of fact as to whether Respondent's proffered reason for discharging her was pretextual.

This matter is being considered pursuant to Respondent's motion for summary decision. A summary decision is analogous to a summary judgment in the Circuit Court. *Cano v. Village of Dolton*, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist 1993). A motion for summary decision is to be granted when the pleadings, depositions, exhibits and affidavits on file reveal that no genuine issue of material fact exists and establish that the moving party is entitled to judgment as a matter of law. See, Section 5/8-106.1 of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.*, and *Young v. Lemons*, 266 Ill. App. 3d 49, 51, 203 Ill. Dec. 290, 639 N.E.2d 610 (1st Dist. 1994). In determining whether a genuine issue of material fact exists, the record is

construed in the light most favorable to the non-moving party, and strictly against the moving party. *Gatlin v. Ruder*, 137 Ill. 2d 284, 293, 148 Ill. Dec .188, 560 N.E.2d 586 (1990); *Soderlund Brothers, Inc., v. Carrier Corp.*, 278 Ill. App. 3d 606, 614, 215 Ill. Dec. 251, 663 N.E.2d 1 (1st Dist. 1995). A summary order is a drastic method of disposing of a case and should be granted only if the right of the moving party is clear and free from doubt. *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill.2d 263, 271, 166 Ill. Dec. 882, 586 N.E.2d 1211; *McCullough v Gallaher & Speck*, 254 Ill. App. 3d 941, 948, 194 Ill. Dec. 86, 627 N.E.2d 202 (1st Dist. 1993).

Although Complainant is not required to prove her case to defeat the motion, she is required to present some factual basis that would arguably entitle her to a judgment under the law. *Brick v City of Quincy*, 241 Ill. App. 3d 119, 608 N.E.2d 920, 181 Ill. Dec .669 (4th Dist. 1993) citing, *inter alia, West v Deere & Co.*, 145 Ill. 2d. 177, 182, 164 Ill. Dec. 122, 124, 582 N.E.2d 685, 687 (1991).

This record presents no material issues of fact as to Complainant's claims of race discrimination; thus, Respondent is entitled to summary decision. Due to this decision, all previously scheduled status dates are hereby stricken.

RECOMMENDATION

Accordingly, I recommend that the Complaint and underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

January 7, 2010

SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section